

# PROCUREMENT

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## CHAPTER 3: PROCUREMENT

### REQUIREMENTS

The Department of Administration's (DOA), Division of Housing (DOH) requires all UGLGs to adopt written Procurement Procedures **prior** to obtaining a Release of Funds for CDBG grant monies. An UGLG must use procurement procedures that are in conformance with Federal, State & local laws & regulations, Federal laws, and standards are identified in 24 CFR Part 85. The 24 CFR Part 85 federal regulation sets forth the standards that are applicable to procurement for Federal grants, cooperative agreements, and sub-awards to State, local, and Indian tribal governments. The State Procurement information is published on the State of Wisconsin VendorNet System <http://vendornet.state.wi.us/vendornet/asp/gvi.asp>

The UGLG must have written selection procedures for procurement adequate to ensure that:

- a. The purchase of unnecessary or duplicate items is avoided. Where appropriate, an analysis should be made of lease vs. purchase alternatives 24 CFR 85.36(b)(4);
- b. Whenever possible, use of federal excess and surplus property, or of intergovernmental agreements for procurement or use of common goods and services should be considered as a way to foster greater economy and efficiency 24 CFR 85.36(b)(5) and (6);
- c. All purchase orders (and contracts) are signed by the UGLG's authorized official(s);
- d. Items delivered and paid for are consistent with the purchase order and/or contract for the goods or services;
- e. Timely payment to vendors occurs once the order is delivered, inspected, accepted, and payment is authorized;
- f. **A cost or price analysis is performed for every procurement action**, including contract modifications, and documentation to that effect is maintained in the UGLG's files. The method and

degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, **the UGLG must make independent estimates before receiving bids or proposals 24 CFR 85.36(f);** and,

- g. Profit or fee is negotiated separately from price where competition is lacking or a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of past performance, and industry rates for the area 24 CFR 85.36(f)(2).

### GENERAL PROVISIONS

The standards and procedures for procurement are intended to ensure that supplies, equipment, construction, and other services are:

- obtained as efficiently and economically as possible; and are
- procured in a manner that provides, to the maximum extent practical, **OPEN** and **FREE** competition.

Solicitations must explain all the requirements that the bidder/offeror has to meet for his or her bid/offer to be evaluated by the UGLG. Solicitations for goods and services must be based on a clear and accurate description of the material, product, or service to be procured, and cannot contain features which unduly restrict competition.

Some of the situations considered to be restrictive of competition include, but are not limited to:

- placing unreasonable qualifying requirements on firms;
- requiring unnecessary experience and excessive bonding;
- specifying only brand name products, instead of allowing an equal product;
- non-competitive pricing practices between firms or affiliated companies; and
- non-competitive awards to consultants on retainer contracts.

Awards are to be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the UGLG, price and other factors considered. Any and all bids may be rejected when it is in the UGLG's interest to do so. The UGLG must ensure that the award is made only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration should be given to such matters as contractor integrity, compliance with public policy, record of past performance, financial capabilities, and technical capabilities.

### DEBARRED & INELIGIBLE CONTRACTORS

The UGLG must ensure that awards are not made to any party which is debarred or suspended, or is otherwise excluded from or ineligible for, participation in federal assistance programs under Executive Order 12549 "Debarment and Suspension" (24 CFR 85.35). UGLG must check the status of all contractors and sub-contractors on the System for Award Management at <http://sam.gov/>

### RECORDS & FILES

According to 24 CFR 85.36(b)(9), the UGLG shall maintain records to detail the significant history of a procurement. The UGLG shall maintain files on the rationale for: selecting the method(s) of procurement used, the selection of contract type, the contractor selection/rejection process, and the basis for the cost or price of a contract.

### USE OF LOCAL, SMALL, MINORITY-OWNED and/or WOMEN-OWNED BUSINESSES

Federal regulations make it very clear that UGLGs should make every effort to use local business firms and contract with small, minority-owned, and women-owned businesses in the procurement process. Specifically, the UGLG must take affirmative steps to use small firms, minority-owned firms, women-owned firms, or labor surplus area firms (24 CFR 85.36(e)). For example, the UGLG should:

- a. Incorporate such businesses in solicitation lists whenever they are potential sources;
- b. Ensure that such businesses are solicited when identified as potential sources;
- c. Divide procurement requirements, when economically feasible, to permit maximum participation of such businesses; and,
- d. Require prime contractors, when subcontracts are let, to take affirmative steps to select such firms.

In conformance with requirements of Section 3 of the Housing and Community Development Act of 1968, to the greatest extent feasible, the UGLG must award contracts for work to be performed to eligible businesses located in or owned by residents of the distribution area to ensure that the employment and other economic opportunities generated by federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very-low income persons, particularly those who are recipients of government assistance for housing (see 24 CFR 570.607(b)).

### IMPORTANT REMINDER!

The desire to award contracts to local firms is **NOT** a legitimate excuse for avoiding an open and competitive procurement process!

## PROCUREMENT OPTIONS

**Initial decision:** Will the UGLG select a third party to perform all or part of the grant-funded activity, using some method of procurement?

- If no, and all of the work will be done in-house, then the UGLG will not have to meet any federal procurement requirements.
- If yes, the federal procurement requirements will apply.

Depending on the scarcity of the item or service desired and the size of the purchase, different methods of procurement are available under the federal regulations.

The UGLG should take several factors into consideration when procuring a contractor, **if the work is contracted out:**

1. No loss-leader arrangements
2. Professional Service(s) needs (for administration, engineering, etc.)
3. Small purchase(s) option
4. Competitive sealed bids option
5. Competitive proposals option
6. Non-competitive proposals/sole source option

### WARNING!

**No loss-leader arrangements:** Federal regulation requires maximum open and free competition. Loss-leader arrangements, where a consultant offers to prepare a grant application or preliminary engineering estimates at reduced rates or at no cost in return for a future contract if the application is funded, are prohibited by Federal regulations.

Loss-leader arrangements violate Federal regulations which require maximum open and free competition. Professional organizations also consider this practice unethical because it deprives the UGLG of the benefits that can result from competition among competent, professional firms.

**Use of One Firm for Grant Administration and Professional Services such as Engineers, Planners, or Architects:** The use of a single firm for grant administration and engineering and/or planning professional services is generally acceptable provided that separate procurement processes are conducted for each of the separate services.

However, a firm serving as the General Administrator for a UGLG is not allowed to bid on a contract for services if the firm assists the UGLG with preparation of the procurement advertisement or assists in any aspect of the procurement process. Assistance with the procurement process includes, but is not limited to: the preparation of advertisements, or the evaluation and scoring of bids.

**Selection of Engineers, Planners, or Administrative Consultants Prior to Grant Award** -- Generally, the use of multi-services procurement and contracting is prohibited except:

- when local officials decide to procure the services of an engineer to assist them with both preparation of preliminary engineering plans (which is not grant application preparation) **and** project engineering, in the event their community is selected for grant award;
- when an UGLG wants to conduct one procurement process to cover both grant preparation **and** grant administration; and,
- when an UGLG wants to conduct one procurement process to cover both planning grant application preparation **and** planning grant implementation.

Any agreement between the UGLG and the engineer or consultant that includes preliminary and project engineering or grant writing and administration services would have to be contingent upon the award of CDBG funds. Local officials would have to follow the procedures for Competitive Proposals.

**Note regarding procurement methods:** Among the procurement approaches described below, the competitive sealed bid resulting in a firm, fixed price contract is the preferred procurement approach when there are numerous available and qualified providers, when the requirements and specifications are thoroughly detailed and are unlikely to change, and where the UGLG has the opportunity to make the provider assume a large share of the risk for non-performance.

**Factor #1 – Small Purchase** option 24 CFR 85.36 (d)(1) – The DOH considers procurement by small purchase procedures best suited to obtaining small quantities of supplies.

UGLGs may follow either their local small purchase procurement policy, State policy, or the Federal policy. If the local policy is used, it must be at least as stringent as the federal policy, described below:

The small purchase method may be used for procurement of \$100,000 or less in the aggregate, per 24 CFR 85.36(d)(1). **A procurement of more than \$100,000 may not be inappropriately broken up into smaller components solely to qualify for the small purchase approach.**

### WARNING!

The State of Wisconsin's procurement limit for small purchase is \$50,000. The UGLG should follow this stricter state regulation, in lieu of the \$100,000 federal policy.

In the small purchase method, competition must be sought through oral or written price quotations. The UGLG must document the receipt of an at least three price or rate quotations from qualified vendors. The UGLG's small purchase procurement documentation should:

1. Identify in writing the item(s) to be procured
2. Solicit in writing, written quotes from at least three qualified bidders. Verbal quotes, documented by the UGLG in writing, are acceptable for purchases of less than \$500
3. Identify the lowest responsible bidder
4. Notify each bidder in writing as to whether or not they are the apparent low bidder
5. Execute a contract to the lowest responsible bidder

**Factor #2 – Competitive Sealed Bid** option 24 CFR 85.36 (d)(2) – The DOH considers this method of procurement best suited to obtaining contractors for construction projects and for large quantities of goods or materials.

This method of selection can be made principally on the basis of price (fixed price contract using lump sum or unit price). Requirements for using the Competitive Sealed Bid method are as follows:



1. The UGLG shall advertise the invitation for bids in publications of general newspaper, solicit bids from an adequate number of known suppliers, providing them sufficient time to respond prior to bid opening;
2. The invitation for bids shall include complete
  - accurate specifications
  - pertinent attachments, and
  - clearly define items or services needed, in sufficient detail for the bidders to properly respond;
3. Bids shall be opened publicly at the time and place stated in the invitation for bids;
4. The UGLG shall receive at least two or more responsible bids for each procurement transaction; and,
5. If awarded, a firm fixed-price contract award shall be made in writing to the lowest responsive and responsible bidder. The UGLG can, however, decide not to make the award to any of the bidders. UGLG may re-bid the project under certain conditions, for example, bids are not responsible or the proposals don't contain information necessary to evaluate the bids.

**Factor #3 – Competitive Proposals** option 24 CFR 85.36(d)(3) – The DOH considers this procurement method best suited to obtaining professional services.

This is normally conducted with more than one source submitting an offer, which results in either a fixed-price or not-to-exceed type contract being awarded. It is generally used when conditions are not appropriate for the use of sealed bids.

This method has two sub-parts:

1. the **Request for Proposal (RFP)**, and
2. the **Request for Qualifications**.

The review process for both statements of qualification and proposals should be thorough, uniform, and well documented. The DOH prefers that this review be conducted by a committee or board which, to the extent possible, includes persons with technical skills relevant to the requests being sought.

Reviewers should have no potential conflicts of interest with the firms or individuals under review, such as family relationships, close friendships, or business partnerships. (Refer to Code of Federal Regulations 24 CFR 85.36, paragraph (b) procurement standards, which in part states: “UGLGs and sub-Grantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, or agent of the UGLG or sub-Grantee shall participate in the selection, or awarding, or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.”)

**Evaluation criteria** for reviewing the competitive proposals should take into consideration:

- *Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project*
- *Past record of performance on contracts with the municipality and other clients, including quality of work, timeliness, and cost control*
- *Capacity of firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm*
- *Familiarity of the firm with the type of problems applicable to the project*

### RECOMMENDATION FOR USING BEST PRACTICES

The above-listed categories shall correspond with number of points. The highest score will determine which proposal will receive the award.

## REQUEST FOR PROPOSALS

1. The Request for Proposals (RFP) must clearly and accurately state technical requirements for goods and services required. It should

specify the scope of services and the type of contract to be provided; cost reimbursement (also known as cost plus fixed fee); fixed price; or per diem contract.

2. The RFP also should specify the cost and pricing data required to support the proposed cost, anticipated start and completion dates, and evaluation criteria to be used in ranking proposals. The UGLG should make available pertinent materials, such as reports, maps and site plans to assist the bidders in preparing proposals. For complicated projects, the UGLG may wish to conduct a pre-bid conference to discuss the project, describe available materials, and explain relevant CDBG contract regulations.
3. The UGLG shall publicize the RFP, and to the maximum extent practicable, honor reasonable requests by parties to have an opportunity to compete;
4. Proposals shall be solicited from an adequate number of qualified sources, consistent with the nature and requirements of the procurement;
5. The UGLG shall conduct a technical evaluation of the submitted proposals to identify the responsible offers; and
6. The UGLG shall award the contract to the most responsive and responsible contractor after price and other factors are considered through scoring the proposals according to predetermined evaluation criteria. The successful proposal/offer must clearly be the most advantageous source of the goods and services.

### REQUEST FOR QUALIFICATIONS

For procurement involving architecture or engineering services, the UGLG may use the Request for Qualifications (RFQ) competitive proposal procedure whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. **In these instances, price is NOT used as a selection factor.** The UGLG should review and rank every statement received, and either contact the first two or three choices to request a proposal covering the scope of services and estimated costs, or select the top firm and begin negotiations.

Once the most-qualified firm is identified, only that firm is asked for a price proposal, which is subject to negotiation of a fair and reasonable price. If

negotiations with the selected firm are unsuccessful, this process is repeated with the next highest-ranked firm, until a fair and reasonably priced contract can be awarded.

The UGLG shall take care to document the basis for its determination of the most qualified competitor and the reasonableness of the contract price. This qualifications-based approach to the competitive proposals method may not be used to purchase anything other than architectural and engineering services 24 CFR 85.36(d)(3)(v).

Note: The above-cited federal rule relating to the procurement of architectural and engineering (A/E) services is quoted (below) verbatim:

*UGLGs and sub-Grantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.*

This language (above) means that the Qualifications-based Procurement Method can be used only for A/E services. If a Request for Qualifications is issued, the competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

### **WARNING!**

An RFQ cannot be used to purchase other types of services, even though A/E firms are potential sources to perform other types of services.

In addition, the federal procurement regulations generally discourage the use of local geographical preferences in the evaluation of bids or proposals except where mandated by federal statutes, due to the resulting geographical restrictions unnecessarily place upon the open competition. However, in procuring architectural and engineering services, geographic location is permitted as a selection criteria provided this criterion results in an appropriate number of qualified firms still being allowed to submit their qualifications for review 24 CFR 85.36(c)(2).

**Factor #4 – Non-Competitive Proposals/Sole Source** option 24 CFR Part 85.36 (d)(4) - This method may be used only under very limited circumstances and **the UGLG must obtain DOH approval before using this method.** When requesting permission to use this method, the UGLG will have to demonstrate that another method of procurement was not feasible because:

1. the item or service was only available from a single source;
2. a public emergency or condition requiring urgency existed which did not permit the use of competitive procurement; or
3. competition was determined to be inadequate after solicitation of proposals from a number of sources.

### STARTING THE WORK

In-House: If the UGLG will use only its own staff to work on the grant, work may begin after the state contract is fully executed and the DOH has provided a written Notice of Release of Funds. The only costs incurred prior to Release of Funds that are eligible for reimbursement from CDBG funds are general administration activity costs, unless a special pre-agreement is issued to the UGLG.

Officials of the UGLG who are acting in their official capacity are considered in-house and are eligible to be compensated for CDBG-related duties if certain conditions are met. For example, if a city council has officially designated an attorney as City Attorney or an engineer as City Engineer, the individual so designated becomes an official of the city. As an official of the city performing CDBG related duties, his/her legal or engineering service charges are eligible program costs to the extent that:

- they are reasonable for the services provided;
- they follow an appointment made in accordance with state and local laws; and,
- the amount of compensation charged to the program will be based on payrolls documented and provided in accordance with generally accepted practices of state and local governments, such as time sheets and other payroll records.

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The DOH will disallow costs for UGLGs that abuse these in-house provisions. For instance, appointments of City Engineers must not be made for the purpose of selecting an engineer to work on an anticipated CDBG project. The UGLG must show evidence that they have a history of appointment, unrelated to any current or anticipated CDBG project.

**Contracted:** If the UGLG wants to contract out for services, the UGLG must go through a procurement process. The UGLG must select the proper procurement method that meets all Federal, State, and local laws for the type of good or service sought and the amount of the contract. The only contract the UGLG may execute prior to the Department's issuance of a Notice of Release of Funds is for general administration services. The Department may reimburse other costs, such as engineering/architectural costs, if properly procured and specifically indicated in the application instructions, as allowable. The actual construction activities may not start until Grant Agreement is signed.

### THE PROCUREMENT FILE

The UGLG must establish a procurement file and monitor the contract to assure that the contract is completed in a satisfactory and timely manner.

The procurement file must contain:

- Description of method used to select consultants;
- Qualification statements, RFP, and proposal(s) received;
- Evaluation method(s);
- Cost and pricing data;
- Contract(s) for services;
- Records of partial payments and supporting documentation (in financial management files); and
- Contract amendments, if any, and rationale for the amendment(s).

### **Designating Grant Administration to another Governmental Entity**

A UGLG may conduct the activities of grant administration for itself, without a procurement process. This statement seems self-evident, but it is included here because the capacity to do one's own grant administration activities forms the foundation for also allowing the UGLG to designate

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(delegate) grant administration activities to some other governmental entities without a procurement process.

**Sub-recipients:** A sub-recipient is a public or private non-profit agency or organization receiving CDBG funds from a UGLG or another sub-recipient to undertake eligible activities. Another way to say this is that Sub-recipients are organizations that are **provided** CDBG funds by a UGLG **for their use** in carrying out agreed-upon, eligible activities.

### WARNING!

The UGLG MUST consult with DOH prior to entering into an agreement with a sub-recipient.

## RELEVANT LAWS

Procurement laws governing public construction in Wisconsin are as follows:

- Wisconsin State Statutes, 66.0901 (general), 59.08 (county), 60.47 (town), 61.54 through 61.56 (village), or 62.15 (cities) concerning advertising and bidding of public projects.
- Also, see Federal Requirements to be attached to bid documents in Chapter 2, Administrative Requirements.

## ATTACHMENTS

Attachments for this Chapter can be found on the following pages.

**\*\*\* REMINDER:** The term “Unit(s) of General Local Government” which is also referred to by its acronym

**“UGLG(s)”, and the term “Grantee(s)” are used interchangeably throughout this Implementation Handbook. \*\*\***



### **ATTACHMENT 3-A: LOBBYING CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his/her knowledge and belief, that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this CERTIFICATION be included in the award documents for all sub-awards at all tiers (including subcontractors, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This CERTIFICATION is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this CERTIFICATION is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required CERTIFICATION shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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(Signature of Chief Executive Officer)

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(Date)

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(Name of Business/Firm)

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## ATTACHMENT 3-B: SAMPLE PROCUREMENT POLICY #1

All public improvements constructed with municipal funds are carried out through a contract awarded to the lowest responsible bid according to the requirements of Wisconsin Statutes.

Major equipment purchases are made from the lowest responsible bidder following public advertisement and distribution of specifications.

Common materials and supplies are purchased from the most price-advantageous source following bids or price quotations usually secured through unpublicized solicitation of more than two sources.

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Signature

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Date

The purchase of all materials and services for all activities within the municipality shall be by written contracts, or pre-numbered purchase orders. Purchase orders are issued by the Clerk's Office upon the request of department foreman.

Purchases of \$500 or less can be approved by the individual Department Chairman and/or foreman provided that the amount has been appropriated in a previous budget. All purchases over \$500 require prior approval of the majority of the Council. Purchase of materials that cost more than \$1,000 requires quotes or bids prior to the approval of the purchase. Public works contracts should be let as provided under section 62.15 of the Wisconsin Statutes.

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Signature

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Date

## ATTACHMENT 3-C: SAMPLE PROCUREMENT POLICY #2

The following represents the procurement policy of the City, Village, County, or Town of \_\_\_\_\_:

1. Supplies required for operation of municipal offices and departments shall be purchased, as required, in accord with purchase order issued by the respective department head. It is required that purchases be made from suppliers located in the community unless price is not competitive or comparable to that of non-local suppliers.
2. Purchase of outlay items, such as vehicles and other equipment, shall be subject to competitive bidding. The department requesting purchase of these items shall make the request based on specifications. The responsible department head, along with the respective council committee, will determine which bid will be most advantageous to the community and make recommendation thereon to the full council. Bids may be invited by letter or by advertisement in the local newspaper.
3. Public Works Projects exceeding the Wisconsin Statutory amount of \_\_\_\_\_ will be bid in accord with Wisconsin State Statutes. Specifications, and/or plans and bid documents, will be furnished to all requesting same. Notice of bid taking shall be published in the local newspaper, Western Builder and Builders Exchange releases. All bids timely received will be opened and read at a pre-specified time and place open to the public. Bids will be received and recommendation thereon will be made to the council. Contract will be awarded to the responsible bidder submitting lowest bid. Force account projects are exempt from this policy.

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Signature

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Date

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## ATTACHMENT 3-D: SAMPLE PROCUREMENT POLICY #3

Purchase and contracts for equipment, materials, supplies and non-personal services, shall be made in the following manner:

- a. The Executive Director shall make purchases not to exceed \$500 in the open market using Small Purchase Procedures after such inquiry as necessary to ensure that the price obtained is the most advantageous to Housing Authority.
- b. For purchases and contracts from \$500 to \$3,000, the Director shall use competitive negotiation and invite offers orally, by telephone, or in writing from at least three suppliers if they are available in the locality.
- c. For purchases in excess of \$3,000 (or as required by State Law), the Director shall use formal advertising methods and shall solicit bids by advertisement in at least one newspaper of general circulation, or by mailing solicitations to bid to all available dealers or by a combination of such methods.
- d. Purchases may be made from the HUD consolidated supply contracts without further solicitation or invitations for bids unless it is believed that lower prices may be available elsewhere.

The Executive Director is required to obtain Board of Commissioners' approval for purchases of equipment and supplies which are in excess of 15 percent of the line item in the approved budget.

The Director shall establish written Small Purchase Procedures to monitor the procurement actions of the staff which will ensure compliance with the above policy.

For purchases specified in "b" and "c" above, lack of competition is permissible when an emergency exists which permits no delay because of the possibility of injury, loss of life or destruction of property, or when only one source of supply is available.

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Signature

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Date

ADDITIONAL NOTES: (optional)

ADDITIONAL NOTES (continued): (optional)